

## REMARKS/ARGUMENTS

This amendment is submitted in response to the Office Action dated February 19, 2003. After entry of this amendment, claims 2-26 will continue to be pending in the application. Reconsideration and allowance is respectfully requested in view of the remarks made below.

### ***1. The Formal Issues***

The originally filed drawings were objected to in the Office Action under Rule 83(a) because the means by which the J-hook is circumferentially compressed with said not to be shown in the Drawings. Applicant respectfully traverses the objection for the reason that none of the claims specifically recite any means for circumferentially compressing the J-hook. Nevertheless, a proposed new Figure 4 is attached that diagrammatically indicates a step of installing the closure on a container so that the J-hook is circumferentially compressed. Approval of the proposed new drawing figure and withdrawal of the objection to the Drawings is respectfully solicited.

### ***2. The §112 First Paragraph Rejections***

Claims 1 and 15-19 were rejected under Section 112, first paragraph, for a number of reasons that were articulated in the Office Action. Specifically, there was some confusion as to what the efficacious molding position set forth in original claim 1 comprised. This basis for rejection is now moot because of the cancellation of claim 1.

In addition, the Office Action took the position that with regard to claims 15-19 it is unclear how the J-hook is urged from the first molded position to the second position wherein it engages the container for retention purposes. The answer to this question is that the movement of the J-hook with is accomplished by moving it inwardly and upwardly, while circumferentially compressing the J-hook during the application of the closure to a container. This is described in detail in Applicant specification. The specific mechanical tooling that will be utilized to accomplish this is not considered to be essential for an understanding of the invention,

particularly as it is being claimed. Accordingly, withdrawal of the rejection under Section 112, first paragraph is respectfully requested.

### **3. *The §112 Second Paragraph Rejections***

Original claims 1 and 15-19 were rejected under Section 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Again, the issue was raised of how the J-hook is urged from the first molded position to the second position where it engages the container for retention purposes. The answer to this question is addressed above in the response to the rejection that was made under Section 112, first paragraph. Frankly, Applicant fails to see how this issue has anything to do with the clarity and definiteness of the claims, which is the necessary basis for a rejection under the second paragraph of Section 112. Accordingly, withdrawal of the rejection is respectfully solicited.

### **4. *The Prior Art Rejections***

Original claims 1-5, 9, 10 and 15 were rejected under Section 102 as being anticipated by U.S. Patent 5,400,913 to Kelly (“Kelly”). Additionally, original claims 6-8, 11-14 and 16-20 were rejected under Section 103 based on a proposed combination of Kelly and US Patent 5,685,443 to Taber et al. (“Taber”). Applicant respectfully traverses these rejections, for the reasons set forth below.

Independent claim 15 reads as follows:

15. A method of applying a tamper evident closure of the J-hook type, comprising steps of:
  - (a) providing a container having an opening;
  - (b) providing a closure of the type including a base, a downwardly depending sidewall portion and a tamper evident band frangibly connected to the sidewall portion that includes a main band portion and a J-hook retention member that includes a plurality of retaining elements and a plurality of flexible web elements, the retention member being oriented in a first molded position wherein it is positioned substantially beneath and in alignment with the main band portion of said tamper evident band; and

(c) installing the closure onto the container so that the retention member is circumferentially compressed and is moved to a second engaged position wherein said retention member is bent upwardly and inwardly to engage the container for retention purposes (emphasis added).

The Kelly reference discloses a tamper indicating closure that is a good example of a conventional J-hook configuration. The as-molded position of the J-hook in Kelly is clearly shown in cross-section in Figure 16 of the reference. It is characterized by the J-hook being oriented so as to be angled sharply upwardly and inwardly with respect to the remaining portion of the tamper evident band. As is described in Applicant's specification, this configuration requires a substantial undercut to be included in the mold that is used to manufacture the closure during the injection molding process.

The retention member in Kelly is clearly not oriented in a first molded position wherein it is positioned substantially beneath and in alignment with the main band portion of the tamper evident band, as claim 15 requires. Accordingly, the Section 102 rejection of claim 15 based on Kelly is improper and should be withdrawn.

Newly presented independent claim 21 reads as follows:

21. A tamper evident closure, comprising:  
a body portion comprising a base and a downwardly depending sidewall portion; and  
a tamper evident band frangibly connected to said sidewall portion, said tamper evident band comprising:  
a main band portion, and  
a J-hook retention member that is oriented in a first molded position that is substantially beneath and in alignment with said main band portion of said tamper evident band, said J-hook retention member extending continuously about an entire circumference of said tamper evident band.

This claim provides that the retention member is both oriented in a first molded position that is substantially beneath and in alignment with the main band portion of the tamper evident band and extends continuously about the entire circumference of the tamper evident band. As is noted above, the Kelly reference clearly fails to disclose the retention member that is oriented in the first molded position that is set forth in claim 21. It is the flexibility of Applicant's retention

portion that permits it to be configured so as to extend continuously about the entire circumference of the tamper evident band while simultaneously being molded in an orientation wherein it is in alignment with the main band portion of the tamper evident band. This combination of features is not disclosed or suggested in any of the references of record, and there is certainly no suggestion or incentive present to combine the disclosures of one or more of the references in order to achieve this feature of applicants invention. Accordingly, Applicant respectfully submits that independent claim 21 patentably defines over the prior art of record.

Independent claim 23 sets forth a method of applying a closure to a container including a step of providing a closure that has a retention member that extends continuously about the circumference of the tamper evident band and a subsequent step of installing the closure onto the container in such a way that the retention member is circumferentially compressed. This aspect of Applicants invention is not described or suggested in any way in the prior art of record. In the Kelly reference, for example, the retention member will tend to circumferentially expand when the closure is installed onto a container, because of the upward and inward orientation of the retention member in its as-molded position.

4. ***Conclusion***

Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner feels that a telephone interview would expedite prosecution of this patent application, he is respectfully invited to telephone the undersigned at 215-599-0600.

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